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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

SHAWN SCOTT, PETITIONER

v.

BRUCE HILYER, JUDGE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is a federal plaintiff seeking to hold responsible a state court judge for the due process deprivations he was subjected to during his state court proceeding barred by the *Rooker-Feldman* doctrine from seeking a remedy in federal court under 42 U.S. C. Section 1983, when that remedy does not upset the prior state court ruling, is not "inextricably intertwined" with the state proceeding and does not require a reconsideration of the underlying state court decision?

2. Does judicial immunity bar the petitioner from prospective injunctive or declaratory relief in federal court against a state court judge under 42 U.S.C. Section 1983, where the judge violated the petitioner's civil rights first by overriding an outstanding declaratory decree by another state court judge prohibiting a summary judgment motion by the petitioner's adversary and then by depriving the petitioner of due process in the course of granting the motion?

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES ii

OPINIONS BELOW 1

JURISDICTION 2

RELEVANT PROVISIONS INVOLVED 3

STATEMENT 5

REASONS FOR GRANTING THE PETITION 15

CONCLUSION 28

APPENDIX

Circuit Court Opinion 1a

Order Denying Rehearing 3a

District Court Decision 4a

TABLE OF AUTHORITIES

CASES

AGOSTINI V. FELTON, 521 U.S. 203, 237(1997) 21

BIANCHI V. RYLAARSDAM, 334 F.3D 895, 903(9TH CIR 2003) 20

BRINKERHOFF-FARIS CO. V. HILL, 281 U.S. 673, 680 (1930) 21

BUSH V. GORE, 531 U.S. 98, 115(2000) 21

COHENS V. VIRGINIA, 19 U.S. 264(1821) 15

COLORADO RIVER WATER CONSERVATION DISTRICT V. UNITED STATES, 424 U.S. 800, 821(1976) 15

DISTRICT OF COLUMBIA COURT OF APPEALS V. FELDMAN, 460 U.S. 462(1983) 14, 15, 16

ENGLAND V. LOUISIANA BD. OF MEDICAL EXAMINERS, 375 U.S. 411, 415(1964) 15

EX PARTE YOUNG, 209 U.S. 123, 167-168(1908) 20

FORRESTER V. WHITE, 484 U.S. 219, 227-229(1988) 27

GASH ASSOCS. V. ROSEMONT, 995 F.2D 726, 728(7TH CIR 1993) 18

GOLDBERG V. KELLY, 397 U.S. 254, 268-269(1970) 24, 25

GRESHAM PARK COMM. ORGAN. V. HOWELL, 652 F.2D 1227, 1235-1236(5TH CIR. 1981) 19, 27

HAMDI V. RUMSFELD, 542 U.S. 507, 533(2004).....25

HARRIS COUNTY COMM'RS COURT V. MOORE, 420 U.S. 77, 88-89(1975).....20

ICC V. LOUISVILLE & N. R. CO., 227 U.S. 88,93-94(1913).....24

IN RE MURCHISON, 349 U.S. 133, 136(1955).....25

JOHNSON V. DE GRANDY, 512 U.S. 997, 1006(1994).....22

JONES V. FLOWERS, 547 U.S. ___,___(2006).....23

KIRCHER V. CITY OF YPSILANTI, 458 F. SUPP. 2D 439, 447-448(E.D. MICH. 2006).....26

KREMER V. CHEMICAL CONSTR. CORP., 456 U.S. 461, 480-483(1982).....22

MEMPHIS LIGHT, GAS & WATER DIV. V. CRAFT, 436 U.S. 1,13-14(1978).....23

MIRELES V. WACO, 502 U.S. 9, 11-12(1991).....27

MITCHUM V. FOSTER, 407 U.S. 225, 242-243(1972).....20

MORRISSEY V. BREWER, 408 U.S. 471, 485-489(1972).....24

MULLANE V. CENTRAL HANOVER TR. CO., 339 U.S. 306, 314(1950).....23

N.A.A.C.P. V. ALABAMA, 357 U.S. 449, 457-458(1958).....21

OFFUTT V. UNITED STATES, 348 U.S. 11, 14(1954).....25

PULLIAM V. ALLEN, 466 U.S. 522, 540-542(1984).....25, 26

QUACKENBUSH, 517 U.S. 706, 716(1996) 15

QUERCIA V. UNITED STATES, 289 U.S. 466, 470(1933) 25

RHOADES V. PENFOLD, 694 F.2D 1043, 1047(5TH CIR 1983) 19, 27

ROOKER V. FIDELITY TRUST CO., 263 U.S. 413 (1923)14, 15, 20

SIMES V. HUCKABEE, 354 F.3D 823, 827 (8TH CIR. 2003) 21

STUMP V. SPARKMAN, 435 U.S. 349, 356-357(1978) 27

WARD V. MONROEVILLE, 409 U.S. 57, 61-62(1972) 25

WILCOX V. CONSOLIDATED GAS CO., 212 U.S. 19, 40(1909) 15

WILLNER V. COMMITTEE ON CHARACTER AND FITNESS, 373 U.S. 96, 103-104(1963) 24

WILLNER V. FREY, 421 F. SUPP. 2D 913, 926 N.18(E.D. VA. 2006) 26

WITHROW V. LARKIN, 421 U.S. 35, 46-47(1975) 25

WOLFF V. MCDONNELL, 418 U.S. 539, 579(1974) 27

WRIGHT V. GEORGIA, 373 U.S. 284, 289-291(1963) 21

STATUTES

28 U.S.C. SECTION 1254(1) 2

28 U.S.C. SECTION 1331 ..... 3, 17, 18

28 U.S.C. SECTION 1343 12

28 U.S.C. SECTION 1343(A)(3) 3

28 U.S.C. SECTION 1738 ..... *passim*

28 U.S.C. SECTION 2101(C) 2

28 U.S.C. SECTIONS 1343(3) 20

42 U.S.C. SECTION 309(C) 26

42 U.S.C. SECTION 1983 ..... *passim*

42 U.S. C. SECTION 1988 13

OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Ninth Circuit in *Shawn Scott v. Judge Bruce Hilyer*, Docket No. 05-35343, decided November 7, 2006, affirming the District Court's refusal to reconsider its dismissal with prejudice of the petitioner's complaint for prospective injunctive and declaratory relief against the respondent, is set forth in the Appendix hereto(App. 1-2).

The unpublished Minute Order of the District Court for the Western District of Washington at Seattle, in *Shawn Scott v. Judge Bruce Hilyer*, Docket No. 04-2368, filed December 7, 2004, ordering the petitioner to show cause why the petitioner's complaint should not be dismissed based upon the doctrine of judicial immunity, is set forth in the Appendix hereto(App. 4-5).

The unpublished Minute Order of the District Court for the Western District of Washington at Seattle, in *Shawn Scott v. Judge Bruce Hilyer*, Docket No. 04-2368, filed January 7, 2005, dismissing with prejudice the petitioner's complaint against the respondent, is set forth in the Appendix hereto(App. 6-7).

The unpublished Minute Order of the District Court for the Western District of Washington at Seattle, in *Shawn Scott v. Judge Bruce Hilyer*, Docket No. 04-2368, filed March 16, 2005, denying the petitioner's motion to reconsider the District Court's earlier dismissal with prejudice of his complaint against the respondent, is set forth in the Appendix

hereto(App. 8-9).

The unpublished opinion of the United States Court of Appeals for the Ninth Circuit in *Shawn Scott v. Judge Bruce Hilyer*, Docket No. 05-35343, decided January 8,2007, denying the petitioner's combined petition for rehearing or for rehearing *en banc*, is set forth in the Appendix hereto(App. 3).

The petitioner's state court complaint against the respondent for injunctive and declaratory relief, is set forth in the Appendix hereto(App. 10-15).

JURISDICTION

The decision of the United States Court of Appeals for the Ninth Circuit affirming the District Court's refusal to reconsider its dismissal with prejudice of the petitioner's complaint for prospective injunctive and declaratory relief against the respondent, was entered on November 7, 2006; and its further order denying the petitioner's timely filed combined petition for panel rehearing or for rehearing *en banc* was filed and decided on January 8, 2007(App. 1-2;3).

This petition for writ of certiorari is filed within ninety (90) days of January 8, 2007. 28 U.S.C. Section 2101(c).

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. Section 1254(1).

RELEVANT PROVISIONS INVOLVED

United States Constitution, Article III, Section 1:

> The judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish....

United States Constitution, Article IV, Section 1:

> Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State....

United States Constitution, Amendment XIV, Section 1:

> ...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. Section 1331:

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. Section 1343(a)(3) & (4):

> (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> ...
>
> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
>
> (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

28 U.S.C. Section 1738:

> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

Civil Rights Act--42 U.S.C. Section 1983:

> Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the

Constitution and laws, shall be liable to the party injuredin an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable....

STATEMENT

Since 1990, the petitioner Shawn Scott ("the petitioner") had experienced pain in his right wrist as a result of the repetitive stress which his employment as a sheet metal worker placed on his upper limbs. In 1995, the petitioner injured his right shoulder in a non-work related fall from a van. During treatment for this injury, he renewed his complaints about pain in his right wrist, a complaint which resulted in a 1996 MRI which showed that the petitioner had torn cartilage in his right wrist. Surgery was performed in the spring of 1996 to repair both his right shoulder and his right wrist.

Two months after this surgery, the petitioner filed a claim with the Department of Labor and Industries for the State of Washington ("the L&I") seeking worker's compensation benefits for his wrist injury and asserting that its genesis was the repetitive stress on this wrist over time incident to his employment as a sheet metal worker. An L&I caseworker (Ms. Katie Holmes) handled the petitioner's claim. As part of her review, she assembled the records of five (5) medical providers, including some doctors who had treated the petitioner in the early 1990's. In

the final analysis, Ms. Holmes rejected the petitioner's claim for compensation because she could not determine that his wrist injury was work related.

The petitioner protested this outcome and consistent with L&I procedure, he submitted to an independent medical examination by Dr. Michael Bidgood in order to discover the etiology of his wrist injury. Bidgood concluded that the petitioner's injury could have been caused by the repetitive stress associated with his job as a sheet metal worker but that it was just as likely to have occurred as a result of his1995 fall from the van. Based on this ruling, L&I affirmed the earlier ruling of Ms. Holmes denying the petitioner's claim for benefits.

Upon the petitioner's appeal of this decision to the State's Board of Industrial Insurance Appeals, he testified that he had experienced problems with his wrist since 1990, well before his fall from the van in 1995. In addition, Dr. Kuechle, the physician who surgically repaired the petitioner's shoulder and wrist in the spring of1996, testified that in his opinion the wrist injury was related to the petitioner's employment as a sheet metal worker. Dr. Bidgood now testified that the wrist injury probably occurred in 1995 when the petitioner injured his shoulder. At the conclusion of the hearing, the Board of Industrial Insurance Appeals reversed L&I's decision, finding that the petitioner's wrist injury was work related and therefore compensable.

In the aftermath of this two-year process to vindicate his right to compensation as a result of his work-related wrist injury, the petitioner brought suit in

King County Superior Court for the State of Washington on July 11, 2000, against L&I for its negligence and fraud in the manner in which it mishandled the medical evidence and denied his claim for compensation. Proceeding *pro se*, he also alleged that L&I had committed the tort of outrage in denying his claim and covering up the true nature of his injury in order to save itself money.

As a result of L&I's allegedly deliberate and/or negligent conduct in mishandling his claim, a process which denied the petitioner worker's compensation benefits (and appropriate medical care) for over two (2) years, the condition of petitioner's wrist worsened and, as he alleged, the two-year delay in medical treatment resulted in seven (7) additional unsuccessful surgeries which ultimately resulted in the fusion of the petitioner's hand to his arm, severe nerve damage and a permanent loss of the use of his dominant hand and wrist, a condition entirely incompatible with his further employment as a Journeyman sheet metal worker in the heavy industrial building trades. He also suffers from adjustment disorder with depressed mood or post traumatic stress syndrome. The petitioner's complaint in state court sought an award of money damages for these injuries.

On February 21, 2001, the then presiding Judge, Richard D. Eadie, J., denied L&I's motion to dismiss the petitioner's complaint, treating it as a motion for summary judgment on all of the petitioner's claims(App. 12). He accepted the petitioner's claims of negligence, fraud and outrage against L&I as being valid, well pleaded ones and directed that any further motion to dismiss by L&I could be grounded *only* on

the statute of limitations defense.

Specifically, Judge Eadie's order of February 21, 2001, reads in pertinent part:

> [L&I's] motion [for summary judgment] is DENIED without prejudice to bringing a motion for summary judgment with respect the statute of limitations defense. The attention of [L&I], to this point, has been on the subject matter jurisdiction issue, almost to the exclusion of addressing the issues raised by [the petitioner] regarding the statute of limitations. Therefore [L&I] may raise the issue of [the] statute of limitations by motion for summary judgment, *but [there shall be] no further consideration of the lack of subject matter jurisdiction issue unless based on authorities (such as statute parallel to 51.48.017 applicable to claims for non-self insuredemployers) that have not previously been brought to the attentionof the court.*

(Emphasis supplied).

As his case neared a trial date, the petitioner was prepared to adduce proof of negligence and fraud by L&I. He had evidence suggesting a scheme by L&I to deny *every claim* for benefits as a matter of course, *regardless of merit*. He also was prepared to offer proof that the Independent Medical Examiners (IMEs) used by L&I were not "independent" at all; in fact, many were not licensed and all were told by L&I to deny claims for reasons having nothing to do with the claimant's injuries. Moreover, the petitioner intended

to show that L&I had manipulated and falsified his own records; and that each of the nine (9) times L&I terminated his benefits, he appealed and proved it was L&I "error" which caused the unlawful termination.

In October of 2001, in violation of Judge Eadie's prior order of February 21, 2001, forbidding it to do so, L&I moved once again for summary judgment on the petitioner's complaint, not only on the grounds of the statute of limitations but also because the petitioner's claims of negligence, fraud and outrage were allegedly invalid, arguments *already* adjudicated---and denied---- by Judge Eadie in February of 2001. Judge Eadie continued the hearing on L&I's summary judgment motion to January of 2002.

On November 16, 2001, Judge Eadie was reassigned and Judge Greg Canova, after being assigned to hear this matter, recused himself. The case was thereafter assigned to the respondent Judge Bruce Hilyer("the respondent" or "Judge Hilyer").

In early January of 2002, Judge Hilyer scheduled a hearing for January 11, 2002, on L&I's second summary judgment motion; but he failed to notify the petitioner's new counsel of the date. When the petitioner's counsel inadvertently discovered from Judge Hilyer's clerk/bailiff that a hearing on this matter was scheduled for January 11, 2002, giving him only six work days to prepare for the hearing, he immediately contacted Judge Hilyer in writing to inform the Judge that he had not been notified of the hearing date for this second summary judgment motion by L&I and could not possibly prepare for the hearing on such short notice:

> I assumed that we would receive a formal Note for Motion and we did not. We likewise received no phone call or other communication to alert us to the setting on January 11, 2002....After speaking with... Your Honor's bailiff, we were informed that the proper method of noting the motion would be in accordance with CR 56 which would allow us adequate response time. *Either way, no notice whatsoeverwas sent to this office in any form....*

(Emphasis supplied).

Through his bailiff, Judge Hilyer told the petitioner's counsel to file a motion for a continuance. The petitioner's motion for a continuance read in pertinent part:

> We seek continuance of the summary judgment motion inasmuch as it was less than one week ago that we ever had any notice of its date and the time. Pursuant to CR 56 there are time constraints for such a motion of which the Court is undoubtedly aware....We never received a phone call, letter or a Note for Motion or any such communication that would have alerted us to the new date for defendant's motion....In fairness and in keeping with the purposes behind CR 56 plaintiff respectfully requests that the Court continue this matter for at least 30 days so as to give plaintiff proper time to respond....*Absent any prior notice whatsoever the plaintiff would be prejudiced in having to go forward with the motion as presently scheduled.*

(Emphasis supplied).

At the hearing on January 11, 2002, Judge Hilyer first denied the petitioner's motion for a continuance, calling the reasons cited by the petitioner for such relief to be "vague and ambiguous;" he characterized the lack of notice as merely a matter of "counsel courtesy;" and he reasoned that since the petitioner's counsel appeared at the hearing in order to argue the motion for a continuance, he should be able to defend the case against L&I's summary judgment motion.

Then, admitting that he did not have "a whole lot of knowledge about the case," Judge Hilyer addressed L&I's summary judgment motion challenging for the second time all of the petitioner's claims, claims which had already been adjudicated by Judge Eadie to be valid several months before. He thereupon dismissed all of the petitioner's claims against L&I from the Bench, inappropriately making findings of fact and rulings of law against the petitioner's claims without citation to any legal authority or to any documentation.

Furthermore, Judge Hilyer dismissed all of the petitioner's claims against L&I solely on the basis of L&I's brief, with full knowledge that the petitioner was not prepared for the hearing, had received inadequate notice thereof, had no opportunity to file a responsive brief and was not allowed to argue that the motion was wrongly before the judge in the first place and that it should be denied on its merits in the second place, as Judge Eadie had already ruled.

On August 4, 2003, the Court of Appeals for the State of Washington affirmed the entry of summary

judgment in favor of L&I in an unpublished opinion which ruled *inter alia* that Judge Hilyer did not abuse his discretion in denying the petitioner's motion for a continuance. On May 4, 2004, the Supreme Court of Washington denied the petitioner's petition for review.

On November 24, 2004, the petitioner began this civil action against the respondent in the federal district court at Seattle(App. 10-15). Invoking the court's jurisdiction under 28 U.S.C. Section 1343, and alleging most of the facts already recited herein, the *pro se* petitioner claimed in his "First Cause of Action" that Judge Hilyer violated his civil rights under 42 U.S.C. Section 1983, by denying him his right to due process under the fourteenth amendment to the federal constitution when he failed to provide him or his counsel with notice of the hearing on L&I's second summary judgment motion; denied his motion for a continuance; and then dismissed all of his claims against L&I without allowing him to brief or argue in opposition(App. 13-14).

In his "Second Cause of Action," the petitioner claimed that Judge Hilyer denied him due process and the equal protection of the laws under the fourteenth amendment when despite Judge Eadie's prior order of February 21, 2001, expressly limiting L&I's future summary judgment motions to claims which had "not previously been brought to the attention of the court," he nevertheless "readjudicated" the petitioner's three claims against L&I of negligence, fraud and outrage, dismissing all of them after Judge Eadie had ruled favorably on their validity almost one year earlier(App. 14). For relief, the petitioner sought declaratory and injunctive relief by *inter alia* remanding the case to

King County Superior Court for jury trial and by awarding him his reasonable attorney's fees, if any, under 42 U.S. C. Section 1988(App. 14-15).

On December 7, 2004, the District Court, Zilly, J., issued a minute order requiring the petitioner to show cause why his complaint should not be dismissed on the grounds of judicial immunity(App. 4-5). The petitioner, still appearing *pro se*, filed a response in opposition to the motion to show cause, arguing that he was not seeking damages but only prospective declaratory and injunctive relief(App. 6-7). On January 7, 2005, however, Judge Zilly dismissed with prejudice the petitioner's complaint against Judge Hilyer on the grounds that the petitioner "has not alleged or explained in his response that a declaratory decree was violated or that declaratory relief was unavailable in state court," as required by the Federal Courts Improvement Act of 1996, amending 42 U.S.C. Section 1983(App. 7).

The petitioner, now represented by counsel, urged the district court to reconsider its ruling by arguing that when Judge Hilyer considered L&I's second motion for summary judgment and then readjudicated the validity of the petitioner's three claims against L&I, he violated the outstanding declaratory decree of Judge Eadie on February 21, 2001, which expressly limited L&I's future summary judgment motions to claims which had "not previously been brought to the attention of the court."

On March 16, 2005, the district court denied the petitioner's motion for reconsideration on the grounds that Judge Hilyer did not violate a declaratory decree

and because his claim against Judge Hilyer is barred by the *Rooker-Feldman* doctrine which limits federal jurisdiction in these circumstances (App. 8-9). The doctrine, enunciated by this Court in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462(1983), holds that lower federal courts lack jurisdiction to provide appellate review of state court judgments or claims "inextricably intertwined" with state court judgments(App. 8-9).

The petitioner appealed and without oral argument, the court of appeals unanimously affirmed the dismissal of the petitioner's claims in an unpublished opinion on November 7, 2006 (App. 1-2). The court ruled that the district judge had correctly ruled that "this case is barred by the *Rooker-Feldman* doctrine"(App. 2).

On January 8, 2007, the court of appeals denied the petitioner's timely filed combined petition for panel rehearing or for rehearing *en banc*(App. 3). The petitioner has now brought to this Court his petition seeking a writ of certiorari to the Court of Appeals for the Ninth Circuit.

REASONS FOR GRANTING THE PETITION

1. The Decision Below Expands The *Rooker-Feldman* Doctrine Beyond The Contours Mandated By This Court's Unanimous Opinion in *Exxon Mobil Corp., Inc. v. Saudi Basic Industries Corp.*, 544 U.S. 280(2005) And Wrongly Deprives The Petitioner Of Redress For the Violation of His Constitutional Rights Under 42 U.S.C. Section 1983.

This Court has repeatedly acknowledged that the federal courts have a "virtually unflagging obligation...to exercise [the] jurisdiction given them." *Quackenbush*, 517 U.S. 706, 716(1996). *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 821(1976). *England v. Louisiana Bd. of Medical Examiners*, 375 U.S. 411, 415(1964). *Wilcox v. Consolidated Gas Co.*, 212 U.S. 19, 40(1909). *Cohens v. Virginia*, 19 U.S. 264(1821). The *Rooker-Feldman* doctrine is an exception to this general duty of a federal district court to exercise its jurisdiction consonant with the grants of power given it by Congress under Article III and by federal civil rights legislation.

In *Rooker v. Fidelity Trust Co.*, 263 U.S. 413(1923), it was held that only the Supreme Court, not the lower federal courts, has jurisdiction to review state court decisions. *Id.* at 416. In *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462(1983), this Court further held that federal district courts may not exercise jurisdiction over facially constitutional issues which are "inextricably intertwined" with a state court judgment since this would be tantamount to a federal district court sitting in direct review of the decisions of

the state tribunal. *Id.* at 476;482 n.16. Thus the *Rooker-Feldman* doctrine prohibits federal district courts from adjudicating actions in which the relief requested requires determining that the state's decision is wrong or voiding the state court's ruling.

Since *Feldman*, this Court has provided little guidance to inferior federal courts for determining which federal claims are "inextricably intertwined" with a prior state court judgment and which are not for purposes of this doctrine. However, in a unanimous opinion in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280(2005), the Court sought to simplify the reach of the *Rooker-Feldman* doctrine and to rein in any expansive views of the doctrine which have led lower federal courts to refuse to hear cases which legitimately invoked their federal jurisdiction.

As the Court in *Exxon Mobil* stated, speaking through Ginsburg, J.,

> [v]ariously interpreted in the lower courts, the doctrine has sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law pursuant to 28 U.S.C. Section 1738....
>
> ....
>
> The *Rooker-Feldman* doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought by

> state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments. *Rooker-Feldman* does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state-court actions.

Id. at 283-284. *Exxon Mobil* involved parallel state and federal litigation and this Court held *inter alia* that *Rooker-Feldman* is not triggered simply by the entry of a judgment in state court. *Id.* at 292-293. Disposition of the federal claim, once the state-court adjudication is complete, would be governed by regular preclusion law consonant with the Full Faith and Credit Act, 28 U.S.C. Section 1738.

With cases such as this one where the state-court litigation brought by the petitioner is finished by the time he seeks to invoke federal jurisdiction under 28 U.S.C. Sections 1331 or 1343, the *Exxon Mobil* Court stated that

> [n]or does [Section] 1257 stop a district court from exercising subject- matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court. *If a federal plaintiff "present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party..., then there is jurisdiction and state law determines whether the defendant prevails under principles of*

preclusion."

Id. at 293 (emphasis supplied) quoting *GASH Assocs. v. Rosemont*, 995 F.2d 726, 728(7th Cir. 1993) and citing *Noel v. Hall*, 341 F.3d 1148, 1163-1164(9th Cir. 2003).

Given this law, the petitioner submits that the court of appeals' reliance on *Rooker-Feldman* to affirm the district court's decision dismissing his civil rights action against the respondent erroneously expands the contours of this doctrine beyond the limits mandated by this Court in *Exxon Mobil* and contravenes regular preclusion law embodied in the Full Faith and Credit Act, 28 U.S.C. Section 1738. In the aftermath of *Exxon Mobil*, especially with a civil rights action such as this one begun by a federal plaintiff once the state-court adjudication was concluded, the *Rooker-Feldman* doctrine provides no good reason rooted in federalism or comity to deny federal courts the jurisdiction to hear the petitioner's claims and the lower courts here were wrong to conclude otherwise.

In the first place, the petitioner's federal complaint describes serial violations of his due process rights in the state-court proceeding. It does *not* require the district court to disturb the state- court judgment in order to conclude that Judge Hilyer violated the petitioner's due process rights when he dismissed his claims in contravention of Judge Eadie's outstanding order barring L&I from again seeking summary judgment, when he failed to provide the petitioner notice and failed to give the petitioner's counsel the opportunity to brief or argue orally in opposition to his ruling. These issues are not "inextricably intertwined" with the state court judgment, do not require that the

state court judgment be rejected and can be determined without examining the underlying state-court decision. Under this Court's analysis in *Exxon Mobil*, *supra*, the *Rooker-Feldman* doctrine is not and cannot be invoked.

Second, the petitioner's federal complaint seeks declaratory or injunctive relief which would, among other things, remand the petitioner's "case to King County Superior Court for jury trial," in effect nullifying the state-court judgment(App. 15). Where a plaintiff asks a federal court to declare a state court judgment null and void, the federal court should consider this prayer as one requesting an injunction enjoining its enforcement. *Rhoades v. Penfold*, 694 F.2d 1043, 1047(5th Cir. 1983) quoting *Gresham Park Comm. Organ. v. Howell*, 652 F.2d 1227, 1235-1236(5th Cir. 1981). But a complaint seeking an order enjoining the enforcement of a state-court judgment is *not* one seeking appellate review of a state-court judgment in federal court and it does *not* run afoul of any articulation of the *Rooker-Feldman* doctrine in the wake of this Court's decision in *Exxon Mobil*.

The petitioner alleged in his federal complaint that the state-court proceedings *themselves*, as superintended by Judge Hilyer on January 11, 2002, amounted to a deprivation of his constitutional rights since at the minimum he was deprived of adequate notice or an opportunity to be heard incident to the state court judge's ruling on L&I's second summary judgment motion. Importantly, the petitioner was *not* asking Judge Zilly to review the substantive issues involved in that proceeding. To the contrary, he was simply alleging that the entire proceeding, quite apart

from the substantive issues of the right of the petitioner to recover against L&I, was constitutionally defective. So viewed, it falls squarely within the provisions of Section 1983 and its jurisdictional counterpart, 28 U.S.C. Sections 1343(3) & (4).

Simply put, the petitioner seeks to obtain in federal court redress for the "deprivation, under color of...State law, ...custom or usage, of [a] right,...secured by the Constitution of the United States...," giving the federal court jurisdiction under Section 1343. Indeed, in *Rooker* itself, this Court sitting as a federal court considered on its merits and then rejected the plaintiff's claim that judicial bias had rendered the state-court proceeding a violation of the plaintiff's due process rights.263 U.S. at 416-417. Because this core aspect of *Rooker* has not been overruled by *Exxon Mobil*— in fact, it has been *affirmed* by this Court in *Exxon Mobil*---the petitioner's challenge to the authority of Judge Hilyer to adjudicate a case while depriving the petitioner of his due process rights to notice and a right to be heard is *not* subject to dismissal under *Rooker-Feldman.* See *Bianchi v. Rylaarsdam*, 334 F.3d 895, 903(9th Cir.2003).

Indeed, this Court has repeatedly held that the federal courts have jurisdiction over claims that state judicial proceedings have resulted in deprivations of federal constitutional rights as long as those claims are otherwise properly before the federal courts. See, e.g., *Harris County Comm'rs Court v. Moore*, 420 U.S. 77, 88-89(1975); *Mitchum v. Foster*, 407 U.S. 225, 242-243(1972); *Ex Parte Young*, 209 U.S. 123, 167-168(1908). See also *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 18(1987)(Scalia J., concurring); *id.* at 21(Brennan, J.,

concurring); *id.* at 28(Blackmun, concurring); and *id.* at 31 n.3(Stevens, J., concurring).These precedents have not been overruled, see *Agostini v. Felton*, 521 U.S. 203, 237(1997), and after *Exxon Mobil*, there is no question that the petitioner's due process claims were otherwise properly before the district court for resolution.

Third, the *Rooker-Feldman* doctrine has no application where as here the federal plaintiff was not given a reasonable opportunity to raise his federal claims in the state-court proceedings. See *Simes v. Huckabee*, 354 F.3d 823, 827;829-830(8th Cir. 2003)(collecting the decisions of the circuit court of appeals and refusing to apply the doctrine). While the petitioner sought to raise on appeal the due process deprivations caused by Judge Hilyer's conduct, neither Washington's intermediate appellate court nor its Supreme Court addressed the issue. The federal guaranty of due process, as applicable to the petitioners under the fourteenth amendment, extends to state action through its judicial branch of government. *Brinkerhoff-Faris Co. v. Hill*, 281 U.S. 673, 680 (1930). Where state trial and appellate courts have interpreted their own laws in a way that denies the state-court litigant an opportunity to be heard on the substantive right affected, it violates that litigant's due process rights regardless of whether he has timely or properly raised the federal issue in state court. See, e.g., *Bush v. Gore*, 531 U.S. 98, 115(2000) (Rehnquist, C.J., concurring). *Wright v. Georgia*, 373 U.S. 284, 289-291(1963).; *N.A.A.C.P. v. Alabama*, 357 U.S. 449, 457-458(1958).

Moreover, the petitioner's federal court

complaint asserts a legal wrong committed by Judge Hilyer, an adverse party in federal court *who was not a party to his state court action. Rooker-Feldman* cannot apply in these circumstances. *Johnson v. De Grandy*, 512 U.S. 997, 1006(1994). *Noel v. Hall*, 341 F.3d at 1163, cited approvingly by this Court in *Exxon Mobil*, *supra*. In addition, because Judge Hilyer was not a party to the state-court litigation and because the petitioner was not given a full and fair opportunity to litigate his federal claims there, he cannot be bound by the regular rules of preclusion in order to bar his federal claims now. *Id.* See *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 480-483(1982).

For all these reasons, a writ of certiorari should issue to review the judgment of the United States Court of Appeals for the Ninth Circuit and, ultimately, to vacate and reverse that judgment and remand the matter to the United States District Court for the Western District of Washington at Seattle, with instructions that the petitioner be given the opportunity to show why the state-court judgment should be nullified on account of the denial of his due process rights in that forum.

2. The Decision Below Undercuts This Court's Holdings That The Doctrine of Judicial Immunity Should Not Bar Absolutely The Petitioner's Civil Rights Action Seeking Prospective Injunctive And Declaratory Relief Against This State Court Judge For Denying Him Due Process In The State Court Proceeding.

A. The Due Process Deprivation.

1. Notice. Due process demands that the petitioner and his attorneys be given notice of the hearing on summary judgment in the Washington state courts which was reasonably calculated under all the circumstances to apprise him of the precise nature of this proceeding. *Jones v. Flowers*, 547 U.S. ___,___(2006)citing *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 314(1950). The notice must reasonably and fairly convey the required information so that he could appear, marshal his arguments and respond effectively with his objections in whatever form was allowed. *Id. Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1,13-14(1978).

As a matter of fundamental fairness, the petitioner was entitled to enough time in the circumstances to give him an opportunity to respond meaningfully to the L&I's second motion for summary judgment. Judge Hilyer's refusal to give him that time—and then to dismiss his case from the Bench---is fundamental error. *Mullane v. Central Hanover Tr. Co., supra.*

2. A Full Evidentiary Hearing On Contested

Fact Issues. Especially in view of the fact that notice of this second summary judgment hearing was constitutionally insufficient, the procedures employed at this proceeding should have been "tailored to the capacities and circumstances of those who [were] to be heard." *Goldberg v. Kelly*, 397 U.S. 254, 268-269(1970). There were fundamental fact questions to be determined by Judge Hilyer before he could dismiss the suit consonant with the plaintiff's rights in the circumstances. These questions invoked the adequacy of the factual development of the record, the very heart of any summary judgment motion.

Considering the level of deprivation which would flow from Judge Hilyer's decision on summary judgment and the low tolerance for the risk of a mistaken decision, see *Morrissey v. Brewer*, 408 U.S. 471, 485-489(1972) , these fact questions could not be resolved by mere oral argument or by requiring that the parties simply submit their respective positions "on the papers." Instead, "[i]n almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross examine adverse witnesses." *Goldberg v. Kelly*, 397 U.S. at 269-270 citing *ICC v. Louisville & N. R. Co.*, 227 U.S. 88,93-94(1913) and *Willner v. Committee on Character and Fitness*, 373 U.S. 96, 103-104(1963).

The very nature of the summary judgment procedure allows the party opposing the motion at least the opportunity to show through depositions or other discovery where confrontation is allowed the existence of triable issues of fact. Yet here, the summary process employed by Judge Hilyer prevented the petitioner and his attorney from even briefing or

arguing orally in support of his opposition to summary judgment. There was absolutely no opportunity to confront and cross examine adverse witnesses through discovery or otherwise.

3. A Fair And Impartial Tribunal. Due process requires a neutral and detached judge in the first instance. *Hamdi v. Rumsfeld*, 542 U.S. 507, 533(2004). quoting *Ward v. Monroeville*, 409 U.S. 57, 61-62(1972). *Withrow v. Larkin*, 421 U.S. 35, 46-47(1975). *Goldberg v. Kelly*, 397 U.S. at 271. *In re Murchison*, 349 U.S. 133, 136(1955). While the judge is more than a mere umpire, he cannot become an advocate or otherwise use his judicial powers to advantage or disadvantage a party unfairly. *Quercia v. United States*, 289 U.S. 466, 470(1933). Nor "should [he] give vent to personal spleen or respond to a personal grievance." *Offutt v. United States*, 348 U.S. 11, 14(1954). Yet the state court judge's refusal to afford notice of the hearing, his refusal to allow the petitioner the time or opportunity to submit a brief or to argue orally in support of his opposition and his *sua sponte* reasoning from the Bench in favor of L&I all bespeak a bent of mind which unfairly denied the petitioner a fair hearing on his claims in state court.

B. Judicial Immunity.

Recognizing that it "no longer is proper to assume that a state court will not act to prevent a federal constitutional deprivation or that a state judge will be implicated in that deprivation," this Court in *Pulliam v. Allen*, 466 U.S. 522, 540-542(1984), ruled that the doctrine of judicial immunity will bar a civil rights plaintiff from obtaining any relief except prospective injunctive relief against a state judicial

officer under Section 1983 stemming from the judge's violation of the plaintiff's constitutional rights. *Id.*

In 1996, Congress further diluted this Court's holding in *Pulliam* by enacting the Federal Courts Improvement Act of 1996 ("FCIA"), Pub. L. No. 104-317, 110 Stat. 3847, amending 42 U.S.C. Section 1983. Section 309(c) of FCIA adds language to Section 1983 which bars injunctive relief in any Section 1983 action "against a judicial officer for an act or omission taken in such officer's judicial capacity...unless a declaratory decree was violated or declaratory relief was unavailable." See *Kircher v. City of Ypsilanti*, 458 F. Supp. 2d 439, 447-448(E.D. Mich. 2006); *Willner v. Frey*, 421 F. Supp. 2d 913, 926 n.18(E.D. Va. 2006).

Thus before the petitioner could obtain prospective injunctive relief against Judge Hilyer in this civil rights action, he had to show that Judge Hilyer had violated a declaratory decree in state court or that declaratory relief was unavailable in the state courts of Washington. The petitioner submits that he has made such a showing for purposes of surviving any motion to dismiss his civil rights action in federal court.

Specifically, the petitioner's allegations as well as his proof demonstrate that his core claim is that Judge Hilyer, acting under color of state law, did not provide him a fair hearing and that by scheduling without notice a new hearing on L&I's second motion for summary judgment for January 11, 2002, he violated Judge Eadie's clear and unambiguous order----his declaratory decree—of February 21, 2001, that "[there shall be] no further consideration of the lack of subject matter jurisdiction issue unless based on authorities

(such as statute parallel to 51.48.017 applicable to claims for non-self insured employers) that have not previously been brought to the attention of the court." Section 1983's requirement that a declaratory decree be violated in order for injunctive relief to be afforded has therefore been met and the petitioner was entitled to prospective injunctive relief against Judge Hilyer, relief which includes nullifying the state-court judgment, in effect enjoining its enforcement. *See Rhoades v. Penfold*, 694 F.2d at 1047 quoting *Gresham Park Comm. Organ. v. Howell*, 652 F.2d at 1235-1236.

Finally, this Court's decisional law makes clear that a judge is not immune from liability for *non-judicial* actions, i.e., actions not taken in the judge's judicial capacity; nor is he liable for actions, though judicial in nature, taken in the complete absence of all jurisdiction. *Mireles v. Waco*, 502 U.S. 9, 11-12(1991). *Forrester v. White*, 484 U.S. 219, 227-229(1988). *Stump v. Sparkman*, 435 U.S. 349, 356-357(1978). The petitioner submits that when Judge Hilyer denied him, a state court litigant, fundamental fairness and due process in the course of ruling upon L&I's second summary judgment motion, he denied the petitioner fair access to the courts, conduct completely *outside* of his judicial functions and beyond the immunity which the doctrine reasonably provides state court judges.

As this Court noted in *Wolff v. McDonnell*, 418 U.S. 539, 579(1974), the right of access to the courts is founded upon the Due Process Clause and "assures that no person will be denied the opportunity to present *to the judiciary* allegations concerning violations of fundamental constitutional rights." *Id.* (Emphasis supplied). Judge Hilyer's refusal to provide the

petitioner with this fundamental due process right of access to the courts deprived Judge Hilyer in these circumstances of the correlative right to qualify as a member of the judiciary who could assert the affirmative defense of judicial immunity in this action.

CONCLUSION

For all of these reasons identified herein, a writ of certiorari should issue to review the judgment of the United States Court of Appeals for the Ninth Circuit and, ultimately, to vacate and reverse this judgment and remand the matter to the United States District Court for the Western District of Washington at Seattle, with instructions that the petitioner be given the opportunity to show why the state-court judgment should be nullified on account of the denial of his due process rights in that forum; or provide the petitioner with such other relief as is fair and just in the circumstances of this case.

Respectfully submitted,

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No. 05-35343

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SHAWN SCOTT,
Plaintiff - Appellant,

v.

BRUCE HILYER, Judge,
Defendant - Appellee.

November 7, 2006, Filed

October 27, 2006**, Submitted, Seattle, Washington

NOTICE: RULES OF THE NINTH CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

COUNSEL: For SHAWN SCOTT, Plaintiff - Appellant: Joseph P. Williams, Esq., Shoreline, WA.

For BRUCE HILYER, JUDGE, Defendant - Appellee: Thomas W. Kuffel, Esq., KING COUNTY PROSECUTING ATTORNEY'S OFFICE, Seattle, WA.

JUDGES: Before: GOODWIN and KOZINSKI, Circuit Judges, and SHADUR,*** District Judge.

OPINION: MEMORANDUM *

Before: **GOODWIN** and **KOZINSKI,** Circuit Judges, and **SHADUR,***** District Judge.

As the district court correctly recognized, this case is barred by the Rooker-Feldman doctrine. See Rooker v. Fid. Trust Co., 263 U.S. 413, 416, 44 S. Ct. 149, 68 L. Ed. 362 (1923); D.C. Court of Appeals v. Feldman, 460 U.S. 462, 482, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983).

AFFIRMED.

Footnotes

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

*** The Honorable Milton I. Shadur, Senior United States District Judge for the Northern District of Illinois, sitting by designation.

No. 05-35343

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SHAWN SCOTT,
Plaintiff - Appellant,

v.

BRUCE HILYER, Judge,
Defendant - Appellee.

Filed: 1/8/2007

ORDER

Before: GOODWIN and KOZINSKI, Circuit Judges, and SHADUR,*** District Judge.

Appellant's motion for clarification, petition for rehearing and petition for rehearing en banc are denied.

Footnotes

* The Honorable Milton I. Shadur, Senior United States District Judge for the Northern District of Illinois, sitting by designation.

No. 4-2368

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
WASHINGTON
AT SEATTLE

SHAWN SCOTT
Plaintiff Pro se

v.

JUDGE BRUCE HILYER
Defendant

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thom S. Zilly, United States District Judge:

(1) "Judges are absolutely immune from damages actions for judicial acts taken within the jurisdiction of their courts." Schucker v. Rockwood, 846 F.2d 1202, 1204 (9th Cir.1988) (citing Ashleman v. Pope, 793 F.2d 1072, 1075 (9th Cir.1986) (en banc)). A judge loses this immunity only when he acts in the clear absence of jurisdiction or his act is not judicial in nature. Id. (citing Forrester v. White, 484 U.S. 219 (1988)). It appears that the defendant, Judge Bruce Hilyer, is absolutely immune from this action.

(2) The Court hereby ORDERS plaintiff to show cause within 30 days of the entry of this Order why this case should not be dismissed based on absolute judicial

immunity.

(3) The Clerk is directed to send a copy of this Minute Order to all counsel of record.

Filed and entered this 7th day of December, 2004.

BRUCE RIFKIN, Clerk
/s/ Casey Condon
Casey Condon
Deputy Clerk

No. 4-2368

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
WASHINGTON
AT SEATTLE

SHAWN SCOTT
Plaintiff Pro se

v.

JUDGE BRUCE HILYER
Defendant

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) On December 9, 2004, the Court issued an order requiring the Plaintiff to show cause why his claims should not be dismissed for judicial immunity. Docket no. 3. The Plaintiff responded to the Court's order. Docket no. 5.

Plaintiff argues that his claim should not be dismissed because he is seeking declaratory and injunctive relief, not monetary damages, against the Defendant. Plaintiff relies on Pulliam v. Allen, 466 U.S. 522, 541-42 (1984), for the proposition that judicial immunity is no bar to prospective injunctive relief against a judicial officer acting in his judicial capacity. The Plaintiff's reliance is misplaced. In 1996 Congress passed the Federal Courts

Improvement Act ("FCIA) which legislatively overruled Pulliam in some respects. See L.B. v. Town of Chester, 232 F. Supp. 2d. 227, 238 (S.D.N.Y. 2002) (citing 42 U.S.C. § 1983). 42 U.S.C. § 1983, as amended, states, "in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." The Plaintiff has not alleged or explained in his response that a declaratory decree was violated or that declaratory relief was unavailable in state court. Therefore, the Plaintiff's claim for injunctive and declaratory relief against Judge Hilyer is DISMISSED WITH PREJUDICE.

(2) The Clerk is directed to send a copy of this Minute Order to all counsel of record.

BRUCE RIFKIN, Clerk
/s/ Casey Condon
Casey Condon
Deputy Clerk

1/7/2005

No. 4-2368

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
WASHINGTON
AT SEATTLE

SHAWN SCOTT
Plaintiff Pro se

v.

JUDGE BRUCE HILYER
Defendant

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Plaintiffs motion for reconsideration, docket no. 13, is DENIED. The Defendant, Judge Hilyer, is immune from a suit for injunctive and declaratory relief under 42 U.S.C. § 1983. Under the facts and evidence presented by Plaintiffs, Judge Hilyer did not violate a declaratory decree.

Further, the Plaintiffs proposed amended claim against the State of Washington (as well as his original claim against Judge Hilyer) is barred by the Rooker/Feldman doctrine. Under the Rooker/Feldman doctrine, a party who loses in state court `!is barred from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the

losing party's claim that the state judgment itself violates the loser's federal rights." Johnson v.DeGrandy, 512 U.S. 997,1005-06 (1994) (citing District of Columbia Court of Appeals v. Fedman, 460 U.S. 462, 482 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923)). Federal district courts may not exercise appellate jurisdiction over state courts, "[t]his rule applies even when the state court judgment is not made by the highest state court. . . and when the challenge to the state court's actions involves federal constitutional issues." Dubinka v. Judges of the Superior Court, 23 F. 3d 218, 221 (9th Cir.1994) (internal citations omitted). This Court lacks jurisdiction to review Judge Hilyer's order, regardless of who is named as defendant.

(2) The Clerk is directed to send a copy of this Minute Order to all counsel of record.

Filed and entered this 16th day of March, 2005.

BRUCE RIFKIN, Clerk
/s/ Casey Condon
Casey Condon
Deputy Clerk

Dated: 11/24/2004

No. 4-2368

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
WASHINGTON
AT SEATTLE

SHAWN SCOTT
Plaintiff Pro se

v.

JUDGE BRUCE HILYER
Defendant

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

JURY DEMAND

COMES NOW the Plaintiff, Shawn Scott, and alleges as follows:

1. JURISDICTION, VENUE, AND PARTIES

1. This Court has original jurisdiction over this claim under § 1 of the Civil Rights Act of 1871, as amended, 42 U.S.C. § 1983 civil action for deprivation of rights;

2. Plaintiff Shawn Scott is a resident of King County, Washington;

3. Plaintiff Shawn Scott is a permanently disabled

worker in the State of Washington;

4. Defendant Bruce Hilyer is a Judge for the King County Superior Court;

5. Defendant is within the jurisdiction of this Court.

II. FACTS

PLAINTIFF realleges those statements in paragraph 1, above;

1. In July 2000, Plaintiff filed a complaint against the State of Washington Labor and Industries because they either misread or mishandled relevant medical information regarding his industrial injury for medical care and treatement;

2. Plaintiff's claim for medical treatment and care was denied;

3. As a result of the deliberate and negligent denial of Plaintiff's claim, his conditioned worsened over the 2-year period of time it took for the Board of Industrial Insurance Appeals (BIIA) to reverse the denial of his claim;

4. The two-year delay in medical care and treatment resulted in 7 additional unsuccessful surgeries which ultimately resulted in loss of use of Plaintiff's dominant hand and wrist;

5. Plaintiff was a Journeyman Sheetmetal worker in the heavy industrial trades;

6. Plaintiff filed a motion to amend his complaint, adding the causes of fraud and the tort of outrage based on information he received through discovery;

7. Defendants had filed a motion to dismiss Plaintiff's claims;

8. Plaintiff vigorously defended his claims against Labor and Industries over several months;

9. In February 2001, Judge Eadie issued his final order on Defendant's motion to dismiss and ruled in favor of Plaintiff, ordering him to file his amended complaint;

10. On Novemeber 15, 2001 Plaintiff obtained counsel;

11. On November 16, 2001, Judge Eadie was removed from Plaintiff's case and replaced with Judge Greg Canova;

12. On November 26, 2001, Judge Greg Canova recused himself from Plaintiff's case, and noted Judge Bruce Hilyer would be the new judge.

13. Plaintiff's case was struck from the Court Calendar and Judge Greg Canova stated all proceedings would be noted before Judge Hilyer;

14. In January, 2001, Judge Hilyer scheduled a second summary judgment motion hearing and notified Defendants but did not notify Plaintiff;

15. When Plaintiff's counsel inadvertently found about the scheduled summary jdugment hearing scheduled for January 11, 2002, he contacted Judge Hilyer

immediately and told him they were not notified in any way and could not possibly prepare for the hearing with such short notice;

16. Judge Bruce Hilyer instructed Plaintiff's counsel to prepare a motion for continuance;

17. Plaintiff's counsel prepared a motion for continuance which was denied by Judge Hilyer at the summary judgment hearing on January 11, 2002.

18. During the hearing on January 11, 2002, Judge Hilyer readjudicated the causes of action which had been previously ruled on by Judge Eadie:

19. Judge Hilyer dismissed all claims against Labor and Industries.

III. FIRST CAUSE OF CAUSE OF ACTION

1. Judge Bruce Hilyer violated Section 1983 of title 42 of the United States Code by denying Mr. Scott his right to due process;

2. In November 2001, Jude Greg Canova struck Mr. Scott's case from the Court Calendar;

3. In January 2002, Judge Bruce Hilyer scheduled a second summary judgment hearing on Plaintiff's case and notifed Defendants Labor and Industries but failed to notify Plaintiff's counsel.

4. When Mr. Scott's counsel inadvertently found out about the summary judgment hearing, he filed a motion for continuance so he could prepare for the hearing;

5. Nine days later, on January 11, 2002, Judge Hilyer DENIED Plaintiff's Motion for Continuance and dismissed his Complaint Labor and Industries.

IV. SECOND CAUSE OF ACTION

1. During a summary judgment hearing, in February 2001, Judge Eadie ruled favorably on Mr. Scott's causes of action of fraud, negligence and the tort of outrage and issued an Order instructing Mr. Scott to file his amended Compalint with the additional causes;

2. Nearly one year later, after Plaintiff's case had been assigned three different judges, a second summary judgment hearing was conducted on January 11, 2002 under Judge Bruce Hilyer;

3. In the second summary judgment hearing, Judge Hilyer readjudicated the claims of fraud, negligence and tort of outrage and dismissed Mr. Scott's claims against Labor and Industries;

4. Judge Bruce Hilyer violated Section 1983 of title 42 of the United States Code by readjudicating Plaintiff's causes and using that action to dismiss Mr. Scott's case and deny him his trial;

5. Equal protection and due process rest on the doctrines of precedent and stare decisis because all citizens before the court are guaranteed to be subject to the same laws.

V. REMEDY

WHEREFORE plaintiff prays that this Court enter

judgment as follows:

1. Award declaratory and injunctive relief to Plaintiff by remanding Plaintiff's case to King County Superior Court for jury trial;

2. Award to Plaintiff and against defendant of plaintiff's costs and reasonable attorney and consulting attorney fees pursuant to the Civil Rights Attorney's Fees Awards Act of 1976, 90 Stat. 2641, as amended, 42 U.S.C. Sec. 1988.

Respectfully submitted,
s/Shawn Scott, Plaintiff Pro se.